

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
WAIKOLOA SANITARY SEWER COMPANY,)
INC., dba WEST HAWAII SEWER COMPANY))
For Approval of Amended)
Contribution-in-aid-of-Construction))
Fee. Transmittal No. 06-01.)
_____)

DOCKET NO. 2006-0090

ORDER NO. 22392

Filed April 17, 2006
At 10 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

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STATE OF HAWAII
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STATE OF HAWAII

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²The Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"), is an *ex officio*

I.

Background

A.

WHSC

The Waikoloa community in the South Kohala area on the island of Hawaii consists of two (2) utility service areas: (1) Waikoloa Village; and (2) Waikoloa Beach Resort. Within Waikoloa Village: (1) West Hawaii Water Company ("WHWC") provides water utility service; and (2) WHSC provides wastewater utility service. West Hawaii Utility Company ("WHUC") provides water and wastewater utility services to the Waikoloa Beach Resort.

WHUC's sole stockholder is Waikoloa Development Company ("WDC"), while Waikoloa Land and Cattle Company ("WLCC") owns all of the stock in WHWC and WHSC. WDC and WLCC, in turn, are related companies with common ownership.

On December 29, 2005, WHSC filed an application for a general rate increase utilizing the 2006 calendar test year ("test year").³

On February 28, 2006, the commission opened an investigation of WHUC's and WHWC's transmittals to: (1) increase their respective CIAC fees; and (2) amend the present guidelines

party to this proceeding. See HAR § 6-61-62(a). See also Hawaii Revised Statutes ("HRS") § 269-51. WHSC and the Consumer Advocate are collectively referred to as the "Parties."

³See In re Waikoloa Sanitary Sewer Co., Inc., dba West Hawaii Sewer Co., Docket No. 05-0329 ("Docket No. 05-0329"). WHSC and the Consumer Advocate are the parties in Docket No. 05-0329, which is currently pending before the commission.

used to estimate water consumption in calculating the amount of CIAC owed by the developer or commercial applicant.⁴

On March 21, 2006, WHSC filed Transmittal No. 06-01, seeking to amend its CIAC tariff Rule XI ("Rule XI") by increasing the CIAC fee from the current \$7.25 per gallon of estimated daily sewer discharge ("EDSD") to \$32.39 per gallon of EDSD.⁵ WHSC filed its transmittal in accordance with HRS §§ 269-12(b) and 269-16(b) and HAR § 6-61-111, with a proposed effective date of April 20, 2006.

B.

Transmittal No. 06-01

As a condition to receiving service or substantially increasing sewage outflow volume from new or substantially modified facilities, developers and commercial applicants must pay a non-refundable CIAC to WHSC. WHSC Rule XI(1). WHSC utilizes CIAC funds for the purpose of expanding the

⁴See In re Waikoloa Resort Util., Inc., dba West Hawaii Util. Co., Docket No. 05-0288 ("Docket No. 05-0288"), Order No. 22126, filed on November 17, 2005 (transmittals suspended for further commission review); and Order No. 22300, filed on February 28, 2006 (investigation instituted pursuant to HAR § 6-61-57(3)(B)). In addition, the commission held that under the facts and circumstances of Docket No. 05-0288: (1) WHUC's and WHWC's transmittals to increase their CIAC fee did not constitute "any increase in rates" under HRS § 269-16(b); and (2) the requirement of a public hearing under HRS § 269-16(b) was not implicated by the utilities' proposals to amend their respective CIAC tariff rules. See Order No. 22300.

WHUC, WHWC, the Consumer Advocate, and Intervenor Waikoloa Mauka, LLC are the parties in Docket No. 05-0288, which is currently pending before the commission.

⁵WHSC served copies of Transmittal No. 06-01 upon the Consumer Advocate.

capacity of its infrastructure. WHSC Rule XI(2). The CIAC fee required by WHSC as a condition of receiving service to a new facility is payable only once for the facility, provided that an additional CIAC amount may be required from developers or commercial customers for facilities that are substantially modified. WHSC Rule XI(5).

The CIAC assessed by WHSC is calculated on the basis of the utility's estimate of: (1) the outflow from the customer's premises in the case of new facilities; or (2) the increase in outflow from the customer's premises in the case of substantially modified facilities. WHSC Rule XI(7).

WHSC states that, due to rapidly expanding developments in the greater Waikoloa Village service area, significant new demands will be made upon WHSC's system in the near future. Thus, an increase in the CIAC fee is necessary to fund new and expanded sewage treatment plant facilities. In essence, WHSC claims that it must expand its sewage treatment plant facilities in order to meet the anticipated demand for its wastewater utility service. WHSC's proposed new CIAC fee of \$32.39 per gallon of EDSD is based on dollars per gallon of projected annual average sewer discharge for the projected new development.

In conclusion, WHSC asserts:

Adopting this amended CIAC fee does not involve any rate increase to the existing ratepayers and, therefore, subject to the discretion of the Commission, may be established after thirty (30) days prior notice, provided in accordance with HRS § 269-16(b).

WHSC's Transmittal No. 06-01, at 6, Paragraph 15.

C.

Consumer Advocate's Protest and WHSC's Opposition Thereto

On April 3, 2006, the Consumer Advocate timely filed its Protest, recommending that the commission suspend Transmittal No. 06-01 for further review and a public hearing.⁶ In support thereto, the Consumer Advocate asserts:

1. Inconsistencies exist between the information provided by WHSC in Transmittal No. 06-01 and Docket No. 05-0329, WHSC's pending test year rate case.⁷ These inconsistencies must be understood to ascertain the reasonableness of the: (A) test year estimates upon which the requested increase in rates is based (Docket No. 05-0329); and (B) estimates upon which the increase in the CIAC fee is based (Transmittal No. 06-01).

2. Contrary to Docket No. 05-0288, Order No. 22300, filed on February 28, 2006, Transmittal No. 06-01 requires a public hearing and contested case proceeding, pursuant to HRS § 269-16(b).⁸

⁶Consumer Advocate's Protest; and Certificate of Service, filed on April 3, 2006 (collectively, "Protest").

⁷As alleged by the Consumer Advocate, these inconsistencies involve: (1) the number of new customers requiring wastewater treatment service in 2006; (2) the average daily volume of wastewater generated by the occupants of the single and multi-family dwellings; and (3) test year CIAC and plant additions. See Consumer Advocate's Protest, Section II, at 3 - 6.

⁸See Consumer Advocate's Protest, Sections III and IV, at 6 - 14. Relying on two (2) past commission rulings, the Consumer Advocate asserts that the contested case and public hearing requirements set forth in HRS § 269-16(b) do not distinguish between rates that are assessed on a regular recurring basis (i.e., the monthly fixed and usage sensitive charge for utility service rendered) and periodic charges for service (i.e., a CIAC fee or late payment charge). In re Verizon Hawaii Inc.,

3. Transmittal No. 06-01 proposes a significant increase in the CIAC fee currently assessed by WHSC.⁹

On April 12, 2006, WHSC timely filed its Opposition to the Consumer Advocate's Protest, recommending that the commission: (1) deny the Consumer Advocate's request to suspend Transmittal No. 06-01; and (2) allow WHSC's transmittal to take effect, as proposed.¹⁰

Docket No. 03-0034, Decision and Order No. 20620, filed on November 4, 2003 (HRS § 269-16(b) requires that the commission hold a contested case hearing, preceded by a public hearing, on all matters associated with an increase in rates); and In re Hawaiian Tel. Co., Docket No. 5323, Order No. 8372, filed on June 14, 1985 (telephone utility's proposed tariff revision to change the application of the late payment charge from sixty (60) to forty-five (45) days constituted a change in an existing tariff rule or practice, without a corresponding increase in the late payment charge). Instead, the Consumer Advocate contends that the requirements of a contested case and public hearing apply to "any increase in rates" paid for utility service, i.e., whether the proposal affects any of the rates, fees, and other charges for services as set forth in the utility's tariff.

As an aside, the Consumer Advocate also states:

. . . [i]t is not clear why WHSC did not include the proposed increase in CIAC fees with the request set forth in the application filed in Docket No. 05-0239, especially since: (a) the application was filed approximately three months prior to the instant tariff transmittal filing, (b) the information to support both requests is expected to be identical . . . , and (c) the filings will affect one another. If [WHSC] had included the proposed tariff change in the general rate application, the contested case and public hearing requirement would have been addressed.

Consumer Advocate's Protest, at 12.

⁹See Consumer Advocate's Protest, Section III(B), at 10 - 12.

¹⁰WHSC's Memorandum in Opposition to the Consumer Advocate's Protest; and Certificate of Service, filed on April 12, 2006 (collectively, "Opposition").

In response, WHSC asserts:

1. The Consumer Advocate's allegations that inconsistencies exist in WHSC's transmittal are erroneous and based on mistaken assumptions related to a separate proceeding, Docket No. 05-0329.¹¹

2. The commission, in Order No. 22300, unambiguously held that a utility's proposal to increase CIAC fees does not constitute an increase in rates under HRS § 269-16(b), and the requirement of a public hearing is not implicated by a proposal to amend a utility's CIAC tariff rules.¹² Moreover: (A) the past commission decisions relied upon by the Consumer Advocate are inapposite and do not conflict with Order No. 22300; and (B) the Consumer Advocate's interpretation of HRS § 269-16(b) is in conflict with the statute's plain meaning.¹³

¹¹In particular, WHSC asserts: (1) its estimates for the number of new customers requiring wastewater service are based on "will serve" letters issued to applicants and information from developers on specific projects that indicate an approximate time frame for completion; (2) the values in WHSC's Table 4-3 in Docket No. 05-0329 are not comparable to the estimates of wastewater discharge in Exhibit 2 of Transmittal No. 06-01; and (3) while WHSC anticipates incurring design costs for the development of expanded plant facilities in Docket No. 05-0329, plant additions will not be completed for another three (3) to four (4) years, thus, there is no impact on WHSC's rate base calculation for Docket No. 05-0329. See WHSC's Opposition, Section II(B), at 4 - 7.

¹²See WHSC's Opposition, Section II(A), at 3 - 4.

¹³Id.

D.

Waikoloa Mauka, LLC's Protest and WHSC's Reply Thereto

On April 5, 2006, Waikoloa Mauka, LLC timely filed its Protest, recommending that the commission suspend and investigate Transmittal No. 06-01.¹⁴ Like in Docket No. 05-0288, Waikoloa Mauka, LLC asserts that: (1) it recently purchased and acquired approximately 14,000 acres of unimproved land at Waikoloa; (2) some of its unimproved lands are situated within WHSC's service area; and (3) these lands, once developed, will likely need to be connected to WHSC's wastewater treatment facility and will be subject to the payment of CIAC as a condition to obtaining sewage service. Waikoloa Mauka, LLC contends that WHSC's proposal lacks proper justification and sufficient documentation.

On April 13, 2006, WHSC filed its Reply to Waikoloa Mauka, LLC's Protest, recommending that the commission deny Waikoloa Mauka, LLC's request to suspend Transmittal No. 06-01.¹⁵ WHSC contends that: (1) Waikoloa Mauka, LLC's request is made for the improper purpose of negotiating the amount of its specific CIAC payment for estimated utilities at its individual project developments; and (2) Waikoloa Mauka, LLC is not a party in this matter and has not sought to intervene.

¹⁴Waikoloa Mauka, LLC's Protest of Transmittal No. 06-01; and Certificate of Service, filed on April 5, 2006 (collectively, "Protest").

¹⁵WHSC's Reply to WHSC's Protest; and Certificate of Service, filed on April 13, 2006 (collectively, "Reply").

II.

Discussion

HRS § 269-16(b) provides in respective part that "[t]he commission, upon notice to the public utility, may suspend the operation of all or any part of the proposed rate, fare, charge, classification, schedule, rule, or practice[.]"

By its transmittal, WHSC seeks to increase its CIAC fee from \$7.25 per gallon of EDSO to \$32.39 per gallon of EDSO.

Consistent with Docket No. 05-0288, the commission finds: (1) it prudent to suspend Transmittal No. 06-01, pursuant to HRS § 269-16(b); and (2) sufficient cause to open an investigation of WHSC's transmittal, pursuant to HRS §§ 269-6, 269-7, and 269-8, and HAR § 6-61-71.¹⁶ Interested persons will have the opportunity to file, within twenty (20) days from the date of this Order, motions to intervene or participate in the commission's investigation, pursuant to HAR § 6-61-57(3)(B).¹⁷

¹⁶HRS § 269-6 sets forth the commission's broad general powers and supervision over public utilities. HRS § 269-7 authorizes the commission to: (1) examine and investigate the condition of each public utility and all matters of every nature affecting the relations and transactions between the utility and public; and (2) open an investigation upon its own motion. HRS § 269-8 mandates that every public utility or other person that is a subject of the commission's investigation must comply with the commission's request to furnish information. HAR § 6-61-71 authorizes the commission to investigate at any time matters subject to its jurisdiction.

¹⁷HAR § 6-61-57(3)(B) provides in part that a motion to intervene or participate shall be filed within "[t]wenty days after the commission orders an investigation including an investigation of a tariff change[.]" The commission, in this instance, will serve a copy of its Order upon counsel for Waikoloa Mauka, LLC.

III.

Orders

THE COMMISSION ORDERS:

1. WHSC's Transmittal No. 06-01, filed on March 21, 2006, is suspended, and an investigation is instituted to examine the merits of WHSC's transmittal.

2. Any interested person seeking to intervene or participate in this proceeding shall file a timely motion with the commission within twenty (20) days from the date of this Order, pursuant to HAR § 6-61-57(3)(B), with copies served on each of the Parties to this proceeding. Motions to intervene or participate shall comply with the applicable requirements of HAR §§ 6-61-55 and 6-61-56 of the commission's *Rules of Practice and Procedure*.

3. Further commission action will follow.


DONE at Honolulu, Hawaii APR 17 2006.

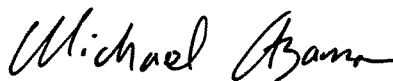
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

By 
Janet E. Kawelo, Commissioner


Michael Azama
Commission Counsel

WHSC:eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22392 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: April 17, 2006